## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| In re application of: **Yabuta et al.** § | |
| § | Group Art Unit: **3625** |
| Serial No. **09/900,265** § | |
| § | Examiner: **Fadok, Mark A.** |
| Filed: **July 6, 2001** § | |
| § | |
| For: **Method and System for** § | |
| **Performing Commodity Purchasing** § | |

**Commissioner for Patents**
**P.O. Box 1450**
**Alexandria, VA 22313-1450**

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36736
PATENT TRADEMARK OFFICE
CUSTOMER NUMBER

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### APPEAL BRIEF (37 C.F.R. 41.37)

This brief is in furtherance of the Notice of Appeal, filed in this case on August 3, 2006.

A fee of $500.00 is required for filing an Appeal Brief. Please charge this fee to IBM Corporation Deposit Account No. 09-0461. No additional fees are believed to be necessary. If, however, any additional fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0461. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0461.

## REAL PARTY IN INTEREST

The real party in interest in this appeal is the following party: International Business Machines Corporation of Armonk, New York.

## **RELATED APPEALS AND INTERFERENCES**

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

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**STATUS OF CLAIMS**

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**A.     TOTAL NUMBER OF CLAIMS IN APPLICATION**

Claims in the application are: 6-9, 16, and 17.

**B.     STATUS OF ALL THE CLAIMS IN APPLICATION**

1.  Claims canceled:  1-5 and 10-15.
2.  Claims withdrawn from consideration but not canceled:  NONE.
3.  Claims pending:  6-9, 16, and 17.
4.  Claims allowed:  NONE.
5.  Claims rejected:  6-9, 16, and 17.
6.  Claims objected to:  NONE.

**C.     CLAIMS ON APPEAL**

The claims on appeal are: 6-9, 16, and 17

## STATUS OF AMENDMENTS

Claims 13-15 were canceled in the Response filed June 22, 2006.

## SUMMARY OF CLAIMED SUBJECT MATTER

*Independent claim 6:*

The presently claimed invention provides a commodity purchasing method through a network. (Specification, page 15, line 7, to page 16, line 13) The present invention receives a connection request from a device. (Specification, page 17, lines 13-15) The present invention determines whether the connection request includes an identifier, wherein the identifier corresponds to an identification code of a cellular phone and wherein the identifier identifies that the connection request is from a cellular phone. (Specification, page 17, line 15, to page 18, line 2) The present invention performs the following steps in response to the connection request including the identifier. (Specification, page 18, lines 6-7) The present invention stores the identifier and user status information associated with the identifier in a database contained in a system for receiving the connection request. (Specification, page 16, line 17, to page 17, line 11) The present invention executes session control using the identifier and the user status information. (Specification, page 18, lines 7-10) The present invention executes session control for the device using history information that is communicated between the system and the device in response to the connection request not including the identifier. (Specification, page 18, lines 11-18)

*Independent claim 16:*

The presently claimed invention provides a commodity purchasing method through a network. (Specification, page 15, line 7, to page 16, line 13) The present invention receives a connection request from a device. (Specification, page 17, lines 13-15) The present invention determines whether the connection request includes an identifier, wherein the identifier corresponds to an identification code of a cellular phone and wherein the identifier identifies that the connection request is from a cellular phone. (Specification, page 17, line 15, to page 18, line 2) The present invention executes session control using history information that is communicated between a system and the device in response to the connection request not including the identifier. (Specification, page 18, lines 2-6)

# GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

**A.     GROUND OF REJECTION (Claims 6-9, 16, and 17)**

Whether claims 6-9, 16, and 17 are anticipated over Fox et al. (U.S. Patent No. 6,421,781 B1) under 35 U.S.C. § 102.

## ARGUMENT

### A.    GROUND OF REJECTION 1 (Claims 6-9, 16, and 17)

Claim 6 is representative of the claims in this group and reads as follows:

6.    A commodity purchasing method through a network, comprising the steps of:

receiving a connection request from a device;

determining whether the connection request includes an identifier, wherein the identifier corresponds to an identification code of a cellular phone and wherein the identifier identifies that the connection request is from a cellular phone;

in response to the connection request including the identifier, performing the following steps:

storing the identifier and user status information associated with the identifier in a database contained in a system for receiving the connection request; and

executing session control using the identifier and the user status information; and

in response to the connection request not including the identifier, executing session control for the device using history information that is communicated between the system and the device.

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983). Appellants respectfully submit that Fox does not teach every element of the claimed invention arranged as they are in claim 6. More specifically, Fox does not teach in response to the connection request not including the identifier, executing session control for the device using history information that is communicated between the system and the device.

The Examiner alleges that Fox teaches this step in the following section:

The communication protocol of the World Wide Web (WWW) on the Internet 104 is the well known HyperText Transport Protocol (HTTP) or HTTPS, a secure version of HTTP. HTTP runs on top of the Transport Control Protocol

> (TCP) and the Internet Protocol (IP). HTTP us used to control the connection of a
> well known HyperText Markup Language Web browser, or HTML Web browser
> in PC 110, to Web server 112, and the exchange of information therebetween.

(Fox, column 4, lines 24-32)

In this section, Fox describes that HTTP is the well known protocol used by the World Wide

Web. There is no mention whatsoever in this section of Fox, or any other section, of executing

session control for the device using history information that is communicated between the system

and the device **in response to the connection request not including the identifier**. In fact Fox

describes that if a subscriber ID is required for any information to be pushed to the subscriber in

the following sections:

> As set forth in the background of Fox, there are times when the user of a mobile
computing device may wish to "subscribe" to a particular web page on an Internet server in order
to receive updates. For example, referring to FIG. 2 of Fox, if the user of a mobile device 106 or
mobile device 176 wishes to be informed about updates to a particular web page on web server
202, then the user may "subscribe" to that particular web page.

> As part of the subscription process with a particular Web server, the
> subscriber ID of the mobile computing device is recorded. The recording of the
> subscriber ID enables the Web service provider or the Web server 202, to notify
> the user of mobile device 106 of any changes made to the particular web pages
> that are subscribed to by the user of mobile device 106. After mobile device 106
> subscribes, Web server device 202 pushes a notification when there is a change to
> the particular web page subscribed to by mobile computing device 106.

(Fox, column 5, line 60, to column 6, line 10)

In this section, Fox describes that a user who wishes to subscribe to a particular Web page in

order to receive updates. As part of the subscription, the user must submit a subscriber ID, which

enables the Web server to notify the user of any changes made to the particular Web site.

> Referring to the table in FIG. 3, a subscriber ID list 302 maintains a list of
> subscriber IDs of the mobile devices through which the users desire to fetch
> information from the Web server and be informed of any changes to the particular
> pages. Associated with each subscriber in list 302 is a table of web pages to which
> the subscriber has "subscribed." As shown in FIG. 3, a subscriber with subscriber
> ID 861234567-10900_pn.mobile.xyz.net (304) subscribes to several web pages
> available on the web site at server www.xyzAlert.com.

(Fox, column 6, lines 29-38)

In this section, Fox describes that the system maintains the various user's subscriber IDs in a subscriber ID list. Fox further describes that the subscriber ID list has an associated URL table that lists the Web pages to which the user subscribes.

> The URLs representing the information subscribed to by the user are grouped and maintained in URL table 306. It can be appreciated that subscriber ID list 302 generally maintains a plurality of subscriber IDs, each corresponding to one mobile device, typically one user thereof. Similarly, URL table 306 maintains a plurality of groups of URLs. Each group of URLs is associated with one mobile device. The URLs represent information subscribed by the mobile device's user. When the Web server updates information in certain pages, URL table 306 is examined to see if any URLs match the modified news page. When a match is detected, the corresponding subscriber IDs in subscriber ID list 302 are sent notifications that inform the user about the updated information. For example, if a press release from ABC Company is added into the web page located by the URL www.xyzAlert.com/stock/abc then the subscriber with subscriber ID 861234567-10900_pn.mobile.xyz.net (304) will be sent a notification. Notifications inform the interested subscriber that the subscribed news has been updated.

(Fox, column 6, lines 43-61)

As can be seen, Fox describes that when a Web server updates information in certain pages, URL table is examined to see if any URLs match the modified news page. When a match is detected, the corresponding **subscriber IDs in subscriber ID list are sent notifications** that inform the user about the updated information.

Thus, Fox describes only using subscriber IDs to communicate with the subscriber. Fox does not teach executing session control for the device using history information that is communicated between the system and the device **in response to the connection request not including the identifier**. Furthermore, nowhere in any section of Fox does the term "history information" appear. Therefore Fox does not teach in response to the connection request not including the identifier, executing session control for the device using history information that is communicated between the system and the device.

Thus, Fox does not teach each and every feature of independent claims 6 and 16 as is required under 35 U.S.C. § 102. At least by virtue of their dependency on independent claims 6 and 16, the specific features of dependent claims 7-9 and 17 are not taught by Fox. Accordingly, Appellants respectfully request the rejection of claims 6-9, 16, and 17 under 35 U.S.C. § 102 not be sustained.

Furthermore, Fox does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. Absent the Examiner pointing out some teaching or incentive to implement Fox such that session control for the device is executed using history information that is communicated between the system and the device in response to the connection request not including the identifier, one of ordinary skill in the art would not be led to modify Fox to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion or incentive to modify Fox in this manner, the presently claimed invention can be reached only through an improper use of hindsight using the Appellants' disclosure as a template to make the necessary changes to reach the claimed invention.

## CONCLUSION

In view of the above, Appellants respectfully submit that claims 6-9, 16, and 17 are allowable over the cited prior art and that the application is in condition for allowance. Accordingly, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the rejections set forth in the Final Office Action.

/Francis Lammes/
Francis Lammes
Reg. No. 55,353
**YEE & ASSOCIATES, P.C.**
PO Box 802333
Dallas, TX 75380
(972) 385-8777

## CLAIMS APPENDIX

The text of the claims involved in the appeal are:

6.      A commodity purchasing method through a network, comprising the steps of:

receiving a connection request from a device;

determining whether the connection request includes an identifier, wherein the identifier corresponds to an identification code of a cellular phone and wherein the identifier identifies that the connection request is from a cellular phone;

in response to the connection request including the identifier, performing the following steps:

storing the identifier and user status information associated with the identifier in a database contained in a system for receiving the connection request; and

executing session control using the identifier and the user status information; and

in response to the connection request not including the identifier, executing session control for the device using history information that is communicated between the system and the device.

7.      The commodity purchasing method according to Claim 6, further comprising:

executing the connection request using the appropriate session control;

receiving a result from the execution of the connection request; and

returning the result to the device.

8.      The commodity purchasing method according to claim 6, wherein the network comprises a first network for communicating with the device and a second network for communicating with the cellular phone and the method further comprises a step of sending the connection request from the cellular phone through the second network.

9.      The commodity purchasing method according to claim 6, comprising the step of adding the identification code corresponding to the identifier to said connection request sent from the cellular phone.

16.      A commodity purchasing method through a network, comprising the steps of:

     receiving a connection request from a device;

     determining whether the connection request includes an identifier, wherein the identifier corresponds to an identification code of a cellular phone and wherein the identifier identifies that the connection request is from a cellular phone; and

     in response to the connection request not including the identifier, executing session control using history information that is communicated between a system and the device.

17.      The commodity purchasing method according to claim 16, further comprising:

     executing the connection request using the session control;

     receiving a result from the execution of the connection request; and

     returning the result to the device.

## EVIDENCE APPENDIX

There is no evidence to be presented.

# RELATED PROCEEDINGS APPENDIX

There are no related proceedings.